

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/708,526	BOURGEOIS ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Willie J. Daniel, Jr.	2617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 18 July 2007.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) 4-6 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 10 March 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ .  | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

1. This action is in response to applicant's communication filed on 18 July 2007. **Claims 1-3** are now pending in the present application and claims 4-6 are non-elected. This office action is made **Non-Final**.

### ***Election/Restrictions***

2. Claims 4-6 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 18 July 2007.

In response to applicant's traversal argument on pg. 1, 1<sup>st</sup> paragraph, the Examiner respectfully disagrees. Therefore, as indicated in the office action mailed on 28 June 2007, the restriction is maintained.

### ***Specification***

3. The disclosure is objected to because of the following informalities:
  - a. Specification recites "...MMS message..." in the 2<sup>nd</sup> paragraph of the summary of invention section without spelling out the abbreviation in words.  
Appropriate correction is required.
4. This list of examples is not intended to be exhaustive.

***Claim Rejections - 35 USC § 101***

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**Claim 3** is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

**Claim 3** is drawn to a “...computer program product for storing...” (descriptive material) *per se* and considered non-statutory subject matter.

a. **Claim 3** recites the limitation “...computer program product ...” in line(s) 1 of the claim. The Examiner suggests inserting language such as -- computer **readable medium encoded** (or embodied) **with a computer program code executable by a computer** for storing-- which is an example. As indicated above, the suggestion for claim 3 is an example(s) and the Examiner **recommends that the applicant clarify the claim language as supported by the specification** (see [0023]).

Regarding **claim 3**, the claim lacks a proper preamble necessary to establish a statutory computer program claim. For example, the claims failed to claim a computer-readable medium encoded (or embodied) with a computer program which defines structural and functional interrelationships between the computer program and the rest (i.e., other elements) of the computer which permit the computer program's functionality to be realized.

**The Examiner recommends that the applicant clarify the claim language as supported by the specification.**

See MPEP § 2106.IV.B.1(a). [Data structures not claimed as **embodied in computer-readable media** are descriptive material *per se* and are not statutory because they are not

**capable of causing functional change in the computer.** See, e.g., Warmerdam, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory). Such claimed data structures **do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention** which permit the data structure's functionality to be realized.]

6. This list of examples is not intended to be exhaustive. The Examiner respectfully requests the applicant to review all claims and clarify the issues as listed above as well as any other issue(s) that are not listed.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1-3** are rejected under 35 U.S.C. 102(e) as being anticipated by **Wolff et al.**

(hereinafter Wolff) (US 2004/0121790 A1).

Regarding **claim 1**, Wolff discloses within the infrastructure of a communication system (100) which reads on the claimed “mobile telephone network”, a method of storing and forwarding the content of a conference call (see pg. 2, [0018-0019]; Fig. 1) comprising:

in response to a request by a group member, initiating a conference call on the mobile telephone network among a specified group of communication devices (106) which reads on the claimed “mobile telephone devices” (see pg. 2, [0023]);

recording the conference call within the network infrastructure of the mobile telephone network used to broadcast the conference call (see pg. 2, [0018-0019]; pg. 5, [0047]; Fig. 3);  
storing the conference call on a memory subsystem (208) which reads on the claimed “storage medium” within the network infrastructure used to broadcast the conference call (see pg. 2, [0018-0019]; pg. 4, [0039]; pg. 5, [0047]; Fig. 3);

determining which mobile telephone devices (106) did not participate in the conference call (see pg. 7, [0071]); and

composing and sending a conference call notification message to the mobile telephone devices (106) that did not participate in the conference call, the message comprised of information indicating that a conference call took place and is available to be downloaded from the mobile telephone network to the mobile telephone devices for replay (see pg. 7-8, [0072]), where a prompt is provided for miss conversations.

Regarding **claim 2**, Wolff discloses within the infrastructure of a mobile telephone network (100), a system for storing and forwarding the content of a conference call (see pg. 2, [0018-0019]; Fig. 1) comprising:

in response to a request by a group member, means for initiating a conference call on the mobile telephone network among a specified group of mobile telephone devices (106) (see pg. 2, [0023]);

means for recording the conference call within the network infrastructure of the mobile telephone network used to broadcast the conference call (see pg. 2, [0018-0019]; pg. 5, [0047]; Fig. 3);

means for storing the conference call on a storage medium within the network infrastructure used to broadcast the conference call (see pg. 2, [0018-0019]; pg. 4, [0039]; pg. 5, [0047]; Fig. 3);

means for determining which mobile telephone devices (106) did not participate in the conference call (see pg. 7, [0071]); and

means for composing and sending a conference call notification message to the mobile telephone devices (106) that did not participate in the conference call, the message comprised of information indicating that a conference call took place and is available to be downloaded from the mobile telephone network to the mobile telephone devices for replay (see pg. 7-8, [0072]), where a prompt is provided for miss conversations.

Regarding **claim 3**, Wolff discloses within the infrastructure of a mobile telephone network (100), a computer program product for storing and forwarding the content of a conference call (see pg. 2, [0018-0019]; Fig. 1) comprising:

in response to a request by a group member, computer program code for initiating a conference call on the mobile telephone network among a specified group of mobile telephone devices (106) (see pg. 2, [0023]);

computer program code for recording the conference call within the network infrastructure of the mobile telephone network used to broadcast the conference call (see pg. 2, [0018-0019]; pg. 5, [0047]; Fig. 3);

computer program code for storing the conference call on a storage medium within the network infrastructure used to broadcast the conference call (see pg. 2, [0018-0019]; pg. 4, [0039]; pg. 5, [0047]; Fig. 3);

computer program code for determining which mobile telephone devices (106) did not participate in the conference call (see pg. 7, [0071]); and

computer program code for composing and sending a conference call notification message to the mobile telephone devices (106) that did not participate in the conference call, the message comprised of information indicating that a conference call took place and is available to be downloaded from the mobile telephone network to the mobile telephone devices for replay (see pg. 7-8, [0072]), where a prompt is provided for miss conversations.

***Conclusion***

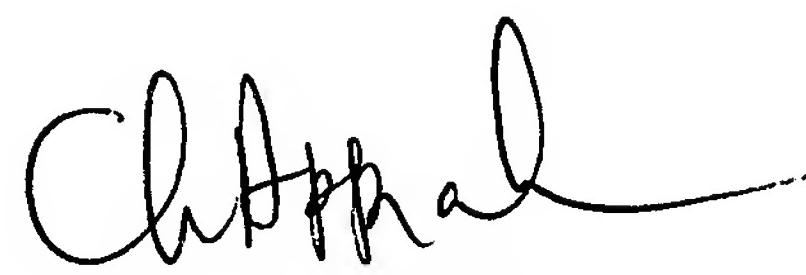
8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
    - a. Onshage et al. (US 2002/0006188 A1) discloses a method of recording information exchanged between telecommunications devices, a method of prohibiting such recording, telecommunications devices for exchanging information, and an electronic accessory device connectable to a telecommunications device.
  9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Willie J. Daniel, Jr. whose telephone number is (571) 272-7907. The examiner can normally be reached on 8:30-4:30.  
  
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Appiah can be reached on (571) 272-7904. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
- Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service

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Representative or access to the automated information system, call 800-786-9199 (IN USA  
OR CANADA) or 571-272-1000.

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WJD,JR  
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CHARLES N. APPIAH  
SUPERVISORY PATENT EXAMINER